

PUBLIC LAW BOARD NO. 1844

AWARD NO. 11

CASE NO. 4

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned junior trackmen to perform overtime service at Meredith, Illinois on August 4, 1975 instead of calling and using Trackman W. L. Krause who was senior, available and willing to perform that service (System File 81-1-232).
- (2) Claimant Krause be allowed eight (8) hours' pay at his time and one-half rate and thirteen and one-half (13 1/2) hours' pay at his double time rate because of the violation referred to within Part (1) of this claim."

OPINION OF BOARD:

At the time this dispute arose, Claimant was a Trackman assigned to a section gang headquartered at DeKalb, Illinois with an assigned workday ending at 3:30 p.m. On August 4, 1975 at approximately 3:50 p.m., some twenty minutes after Claimant and his crew had left work, a derailment occurred on the section territory to which they were assigned. Although Claimant's crew had reported off duty some other section crews were still working at DeKalb and Carrier sent these employees to the scene of the derailment. It appears that some of the employees dispatched to the scene were junior to Claimant in seniority. Also Carrier assigned section gangs from Belvidere and West Chicago to assist in

repairing the derailment damage. Some of the employees utilized from these gangs also were junior to Claimant. Thereafter, under date of September 25, 1975 the instant claim was presented alleging a violation of Rule 31 and asserting that Claimant should have been called by Carrier to perform the overtime work which consumed some twenty-one and one-half hours before completion.

At the outset Carrier alleges that the derailment constituted an emergency before which ordinary seniority rules must yield. Arguendo, Carrier insists that Rule 31 does not apply because no employees were called and, finally, if any damages are payable Claimant is entitled only to the pro rata rate. Treating these points seriatim we find that the allegation of "emergency" is not persuasive. It is well established that bare assertions of emergency are not sufficient and that Carrier has the burden of persuasion when it asserts such a defense. Moreover, a derailment is not ipso facto an emergency as that term is used in railroad labor relations parlance. See Awards No. 19840, 20223, and 20310. This finding is of little comfort to Claimant however because we do find persuasive Carrier's second line of defense to wit that Rule 31 has no application in this case. Close review of handling on the property shows that the Organization posited a two-fold basis for this claim to wit: (1) that trackmen junior to Claimant in his DeKalb section gang were called back to work and he was not; and, (2) that junior men from other section gangs were called ahead of Claimant. The record however convinces us that no men were "called to perform work not continuous with regular work period" for work on the derailment on August 4, 1975. We are not quibbling with semantics over the meaning

of the word "call" and whether it necessarily connotes telephonic communication. In our judgment however by express language Rule 31 applies to situations where employees are contacted to come back to work to perform overtime duty after having reported off. In such situations the Rule provides in unmistakably clear language that senior men have preference: "When necessary to call men under this Rule, the senior available men in the gang will be called." If employees in Claimant's work gang had been called back, then Rule 31 would apply and his preference rights should have been observed. But so far as the record before us shows, none of the employees utilized on August 4, 1975, whether from DeKalb, Belvidere, or West Chicago were called back to work. Rather Carrier utilized section forces already (still) at work and sent them to perform the derailment overtime work. In these particular facts and circumstances Rule 31 did not apply and Claimant's allegation that it was violated must fail. The claim is denied.

FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
 2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD

The claim is denied.

Dana E. Eischen
Dana E. Eischen, Chairman

O. M. Berge
O. M. Berge, Employee Member

R. W. Schmiede
R. W. Schmiede, Carrier Member

Dated: Aug 18, 1977